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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 52

INGRAM M. STAINBACK, WALTER D. ACKERMAN, JR., AND W. H. LOPER,

Appellants,

vs.

MO HOCK KE LOK PO, AN ELEEMOSYNARY CORPORATION, DAI KUNG CHINESE SCHOOL, AN ELEEMOSYNARY CORPORATION, CHUNG SHAN CHINESE SCHOOL ASSOCIATION, AN ELEEMOSYNARY CORPORATION, WAH CHAN THOM, WILFRED CHONG AND LEONG NGET CHO,

Appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT AND TERRITORY OF HAWAII

BRIEF OF AMERICAN VETERANS COMMITTEE (AVC) Amicus Curiae

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December 30, 1948,
Washington, D. C.

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21 *Encyclopaedia Britannica*, p. 677 "Switzerland" (1947)	19
Final Act, First Inter-American Conference on Indian Life, Pátzcuaro, Michoacán, Mexico, April, 1940	3
46th Yearbook, National Society for the Study of Education, Part II, "Early Childhood Education," p. 200 (1947)	18
Graves, Mortimer, "The Language Barrier to International Understanding," 250 *Annals of The American Academy of Political and Social Science* 12 (March 1947)"	6

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Subcomm. of House Comm. on Territories, 74th Cong., 1st sess., p. 82 (Oct. 7-18, 1935) 18, 19, 22
Joint Comm. on Hawaii, 75th Cong., 2nd sess., (Oct. 6-22, 1937) 19
McWilliams, Carey, *Prejudice*, p. 294 (1944) 5
Park, Robert E., "Education and the cultural Crisis," 48 *American Journal of Sociology* 728; 735 (May 1943) 5
Presidential Proclamation 2627, October 19, 1944 (58 Stat. 1158, part 2) 4
Romanian decrees of August 2, 1948 4
Schwartz, Henry B., "A Study of the Effect of Attendance at Language Schools Upon Success in McKinley High School," *Hawaii Educational Rev.* 30 (Oct. 1925) 19
Symonds, Percival M., "The Effect of Attendance at Chinese Language Schools on Ability with the English Language," 8 *Journ. of Applied Psych.* 411 (Dec. 1924) 19
The New York Times, p. 13, (Nov. 13, 1947) 6
The Washington Post, p. 1 (Aug. 3, 1948) 4
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Time Magazine, p. 33 (Oct. 25, 1948) 6
Twenty-second Legislature of Hawaii (1943):
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Wirth, Louis, "Education for Survival: The Jews," 48 *American Journal of Sociology* 682 (May 1943) 24

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PRELIMINARY STATEMENT

This case involves the validity of a statute of the Territory of Hawaii which, by prohibiting the voluntary teaching

of any language except English to children, both during and after regular school hours, (1) effectively denies to racial and cultural minorities the opportunity to transmit their language and cultures to succeeding generations and (2) directly impairs the fundamental civil right of all people to be free from governmental prohibition against voluntary academic instruction not harmful or dangerous to the public or to the government.

The American Veterans Committee (AVC) is an organization of veterans of World War II who have associated themselves to promote the democratic objectives for which they fought in that war.[1]

AVC regards this Hawaiian statute as a Pandora's box full of serious and destructive implications for our national unity, our American heritage of personal freedom, our strength as a Nation, and our relations with the other peoples of the world.

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[1] AVC's basic aims are set forth in the Preamble to the AVC Constitution adopted at its First National Convention at Des Moines, Iowa, June 14-16, 1946:

"We as veterans of the Second World War associate ourselves regardless of national origin, creed or color for the following purposes:

"To preserve the Constitution of the United States; to insure the rights of *free speech, free press, free worship, free assembly* and free elections; To provide thorough social and economic security to all; To maintain full production and full employment in our country under a system of private enterprise in which business, labor, agriculture and government cooperate; *To promote peace and good will among all nations and all peoples;* To support active participation of this nation in the United Nations and other world organizations whose purposes are *to improve the cultural, commercial and social relations of all peoples;* To provide such aid to disabled veterans as will enable them to maintain the position in society to which they are entitled; To provide such financial, medical, vocational and educational assistance to all veterans as is necessary for complete readjustment to civilian life; To resist and defeat all attempts to create strife between veterans and non-veterans; *and to foster democracy.* We dedicate ourselves to these aims, and for their attainment we establish this Constitution" (Emphasis supplied).

If this statute is upheld by this Court, its enforcement will create unnecessary resentments and animosities in a substantial number of people of the Territory of Hawaii. Furthermore, the way will have been opened for the enactment of state legislation designed to destroy or impair the continuance of the languages and cultures of many racial and cultural groups which compose the people of the United States. Nor would such repressive statutes be directed only against persons speaking languages derived from continental Europe and Asia. The original Americans—the American Indians—might, except where they are beyond the reach of state law, fall victim to state legislation forbidding them to teach their native languages to their children. Such legislation would inevitably repress the continuance of this Nation's rich heritage of Indian folklore, art and culture, and would be contrary to the established Federal policy, reiterated in international conferences, to promote native Indian languages. See Resolutions V, VI, XXXV and XXXVI, *Final Act of the First Inter-American Conference on Indian Life*, Pátzcuaro, Michoacán, Mexico, April, 1940. Similarly, political subdivisions of the United States having a large proportion of people speaking languages other than English might enact statutes forbidding the teaching of English. Indicative of this possibility are the bills passed in 1945 and 1946 by the Legislature of Puerto Rico requiring the exclusive use of the Spanish language in the public schools.[2] The enact-

[2] The 1945 bill (Sen. bill 26) was vetoed by Governor Tugwell. Acting Governor Perez's veto of the 1946 bill (Senate bill 51) was overridden by the Puerto Rican legislature on April 5, 1946. The bill was then vetoed by President Truman on October 25, 1946. The decision by the San Juan District Court that the President's veto was ineffective, on the ground that it occurred after the 90 days period prescribed in 48 U.S.C., 1946 ed., sec. 825, was reversed on January 28, 1948, by the Supreme Court of Puerto Rico. *Parrilla* v. *Martin, Comisionado*, 68 Decisiones de Puerto Rico 90 (1948).

ment of legislation like this Hawaiian statute would obviously create and deepen the divisions among racial and cultural groups in this country and thus would weaken, not strengthen, our national unity. See *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 641 (1943).

Perhaps even more ominous is the correlation of legislation like this Hawaiian statute and governmental suppression of personal liberties. History has shown that often one of the first steps toward the destruction of individual freedom is the imposition of governmental restraints on the right to learn. This Hawaiian anti-foreign language statute was itself enacted during the period of martial law in Hawaii.[3] And it is more than mere coincidence that the Communists' recent rise to power in Czechoslovakia and in Romania was soon followed by engulfment of the private schools. In Czechoslovakia, all schools were nationalized effective September 1, 1948, under the Czechoslovakian Education Act of April 21, 1948. In Romania, the government decrees of August 2, 1948, closed all foreign schools and took over all confessional schools. The Associated Press release reporting the Romanian decrees significantly stated: "Resistance will be considered sabotage. Russian will be taught from the fifth primary grade upward." *The Washington Post*, p. 1 (Aug. 3, 1948).

The strength of America stems from the interaction of many heterogeneous cultures. Statutes which, like this Hawaiian statute, seek to compel people "to live in a milieu of cultural monism" not only negate the historic foundations of this country but also impair the strength of America. This Hawaiian statute denies to the entire country the opportunity to develop by choosing the best elements of differ-

[3] Presidential Proclamation 2627 of October 19, 1944 (58 Stat. 1158, part 2) terminated martial law in Hawaii effective October 24, 1944; see *Duncan* v. *Kahanamoku*, 327 U. S. 304, 312, n. 5 (1946).

ent cultures. In addition, it weakens the military strength of the nation by preventing loyal citizens from learning skills which the military forces have found to be of inestimable aid in warfare. Thus, American soldiers of Indian descent were used in World Wars I and II to transmit messages in Indian languages which the German and Japanese intelligence officers were unable to decipher, and in World War II the United States Army and Navy received incalculable assistance from Americans of Japanese and Chinese ancestry through their ability to speak Japanese and Chinese (R. 203, 536, 538). In fact, language schools were established by the armed forces to help meet their urgent needs for more persons able to speak Japanese and other languages.[4] Furthermore, such skills are essential to the nation's strength in peacetime as well as in wartime. The State Department is at this moment seeking personnel familiar with foreign languages. *The Washington Post*, p. 1B (Nov. 11, 1948.) "In the new and more inclusive society which is emerging, we shall be living—particularly if it is to be a free and democratic society—in a new intimacy with all the peoples of the world, not only with our allies but with our enemies. . . . We shall need, as never before, to know human geography and, perhaps, geopolitics. We shall need to know—not all of us, but some of us—all the languages." Robert E. Park, "Education and the Cultural Crisis," 48 *American Journal of Sociology*, 728, 735 (May 1943).

The international relations of the United States would also be adversely affected by the animosities which the enforcement of this statute would create among many people of other nations. As Wendell Willkie reminded us, we live in One World—and the deprivation anywhere of such a

[4] Only about 600 persons in this country, aside from those of Japanese ancestry, are familiar with the Japanese language. Carey McWilliams, *Prejudice*, p. 294 (1944). See also R. 536, 538.

basic human right as the right to teach and learn another language arouses resentment everywhere. Illustrative is the deep resentment aroused throughout the world when Germany suppressed the teaching of French in Alsace-Lorraine,[5] Danish in Schleswig, and Polish in Posen, and when the Russian Czar suppressed the Lithuanian language. A more recent illustration is the current breakdown of trade relations between India and the Union of South Africa resulting from the animosities engendered by the racial policies of the South African Nationalist government whose slogan is "One Country, One Flag, One Language." *The New York Times*, p. 13 (Nov. 13, 1947); *Time* Magazine, p. 33 (Oct. 25, 1948). It is obvious that international amity is aided by furthering the capacity to communicate with different peoples and is impaired by efforts such as these to prohibit voluntary language instruction. Mortimer Graves, "The Language Barrier to International Understanding," 250 *Annals of The American Academy of Political and Social Science* 12 (March 1947). The oppression of people because of their language use and instruction has, in fact, been one of the principal causes of war. That is why this nation has by treaty pledged itself to "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to . . . language." *Charter of the United Nations*, Articles 55(c), 56 (59 Stat. 1031, 1045-1046). And the elimination of oppression because of language is also one of the goals embodied in the proposed United Nations Declaration of Human Rights. *The Washington Post*, p. 1 (Nov. 27, 1948).

Because of these considerations, AVC views this Hawaiian statute as contrary both to the interests and policy of the United States and to the basic aims of AVC. AVC

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[5] See Alphonse Daudet's well known and heart-rending story of "The Last Lesson" in the French schools in Alsace-Lorraine after the Franco-Prussian War of 1870. *Monday Tales*, p. 1.

therefore files this brief as *amicus curiae* urging this Court to affirm the unanimous decision by the three-judge District Court holding the statute unconstitutional.

THE FACTS AND THE STATUTE

The appellants are officials of the Territory of Hawaii. The appellees are three Hawaiian corporations chartered to teach the Chinese language and three Hawaiian citizens, one a Chinese language teacher and the others parents of several children affected by the statute.[6] About 178 so-called foreign language schools have been established formally in the Territory of Hawaii (R. 450). In these schools children are taught to read, write and speak a language other than English (R. 435). Practically all of these schools teach either the Japanese, Chinese or Korean language (R. 436-437). They are conducted and attended solely by persons of Japanese, Chinese and Korean ancestry, respectively. Their hours of attendance are so arranged as not to interfere with attendance at regular public schools (R. 435). There is no contention in this case that they in any way teach disloyalty to the United States, or that their teaching in any way produces or results in such disloyalty.[7] Nor does this case involve the teaching of general subjects (such as American history, mathematics, geography, etc.) in the medium of a language other than English, or any question as to the power of the Territory to compel the study of English in the regular schools.

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[6] The court below dismissed the complaint as to the parents for lack of jurisdiction on the ground that they failed to show that the matter in controversy exceeds $3,000 (R. 78-79, 110, 113). The parents did not appeal. However, the Territory of Hawaii apparently takes the position in its brief that the court below erred in dismissing the complaint as to the parents on this jurisdictional basis (Appellant's Brief, pp. 30-31).

[7] R. 349. *Cf. Baumgartner* v. *United States*, 322 U. S. 665, 674 (1944); *Gitlow* v. *New York*, 268 U. S. 652 (1925); *Whitney* v. *California*, 274 U. S. 357 (1927).

The appellees instituted this suit in the District Court of the United States for the Territory of Hawaii to enjoin the enforcement of a Hawaiian statute approved on May 1, 1943, by the Governor of Hawaii, entitled: "AN ACT Regulating the Teaching of Foreign Languages to Children." Act 104, Session Laws of Hawaii (1943), pp. 38-40; Revised Laws of Hawaii (1945), ch. 31, secs. 1871-1876, pp. 281-282.

Section 3 of Act 104 provides:

> "No child shall be taught a foreign language in any school unless he . . . (a) . . . shall have passed the fourth grade in public school or its equivalent, and shall pass from time to time in each succeeding grade a standard test in English composition and reading . . . attaining a score not lower than normal for his grade; or (b) . . . shall have passed the eighth grade . . .; or (c) . . . shall have attained the age of fifteen years."

Section 2(a) of the act defines the word "school" as meaning

> "any person, firm, group of persons, unincorporated association, corporation, establishment, or institution, which teaches, with or without fees, compensation or other charges therefor, any language other than the English language, as a course of study, to two or more persons as a group, as a regular and customary practice."

Section 1 of Act 104 contains the following "declaration of legislative findings":

> "It is hereby declared that the study and persistent use of foreign languages by children of average intelligence in their early and formative years definitely detract from their ability properly to understand and assimilate their normal studies in the English language . . . and definitely retard their progress in . . . such studies . . . cause serious emotional

> disturbances, conflicts and maladjustments; . . . that it is to the best interest, and will best promote the health and welfare, of children of tender age that such foreign language studies not be undertaken until each child shall have completed and passed at least the fourth grade or shall have attained the age of nine [sic] years, unless such child is earlier able to speak, write and read the English language and has attained a test score of at least 5.0 on standard tests in composition and in reading [sic]; and that the teaching and study of foreign language [sic] to and including the eighth grade or the age of fifteen years should be regulated in the public interest to avoid the detrimental results herein set forth . . ."

Pursuant to the agreement of the plaintiffs and defendants in the District Court, a three-judge court was convened under Section 266 of the Judicial Code (28 U. S. C., 1946 ed., Sec. 380) (now 28 U. S. C. Secs. 1253, 2101, 2281 and 2284, Act of June 25, 1948, Public Law 773, 80th Cong.). The three-judge court held (a) that Section 266 of the Judicial Code is applicable to the District Court of the United States for the Territory of Hawaii (R. 87-92), and (b) that Act 104 of the 1943 Hawaiian session laws violates the due process clause of the Fifth Amendment to the United States Constitution. *Mo Hock Ke Lok Po* v. *Stainback*, 74 F. Supp. 852 (D. Haw. 1947) (R. 77-87). One judge dissented on the jurisdictional issue (R. 93-101); but the decision holding the statute unconstitutional was unanimous. The Territorial officials have appealed directly to this Court.

In this brief, AVC as *amicus curiae* will discuss only the unconstitutionality and effect of Act 104 insofar as it forbids the teaching of foreign languages to children.[8]

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[8] *Quaere* whether the prohibition of section 3 against the teaching of "a foreign language" applies to the teaching of the *Hawaiian* language, unless the reference in the statute to the "English language" magically transforms the native language of the Hawaiian Islands into a "foreign language."

ARGUMENT

I. ACT 104 IS UNCONSTITUTIONAL BECAUSE IT UNJUSTIFIABLY INTERFERES WITH VOLUNTARY ACADEMIC INSTRUCTION.

A. Freedom from Governmental Prohibition Against Voluntary Academic Instruction Not Harmful or Dangerous to the Public Is a Fundamental Civil Right Which This Court Has Uniformly Held Is Protected under the Constitution.

Act 104 of the 1943 Hawaiian legislature vitiates four fundamental civil rights:

(1) The right of a child to learn subjects—languages in this case—which are not so harmful or dangerous to the public, to the government, or to himself as to warrant interference with that right.

(2) The right of parents to direct the instruction of their children with respect to such subjects.

(3) The right of a teacher to teach such subjects.

(4) The right of the owner of a school to obtain pupils for such courses.

This Court has repeatedly protected these rights against violation by statutes similar to Act 104 and in doing so has rejected the very same arguments which are here urged by the Territory of Hawaii in attempting to justify Act 104.

Meyer v. *Nebraska*, 262 U. S. 390 (1923);
Bartels v. *Iowa*, 262 U. S. 404 (1923);
Pierce v. *Society of Sisters*, 268 U. S. 510 (1925);
Farrington v. *Tokushige*, 273 U. S. 284 (1927).

The *Meyer* and *Bartels* cases, decided by this Court on the same day, were a group of five cases involving similar statutes enacted, shortly after the First World War, in Iowa,

Nebraska, and Ohio, forbidding the teaching of any language except English in the primary schools. In the *Meyer* case, Meyer was convicted of teaching the reading of the German language in a parochial school to a child 10 years of age who had not passed the eighth grade. The book used was a book of Bible stories. 262 U. S. 390, 397; see also, pp. 22-23, Record in the *Meyer* case, No. 325, U. S. Supreme Court, Oct. Term, 1922. This Court invalidated the statute, holding that a teacher's "right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the [Fourteenth] Amendment" (262 U. S. 390, 400). This Court rejected the contentions that the statute was justified on the grounds that the use of foreign languages is "injurious to the health, morals or understanding of the ordinary child" (p. 403), "and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled" (p. 401), saying:

> "That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means." (p. 401).

In the four cases covered by the *Bartels* opinion, one involved a suit to enjoin the enforcement of one of the anti-foreign language statutes, and the other three arose out of convictions for teaching parochial school pupils how to read German. This Court held all of the statutes unconstitutional on the authority of the *Meyer* decision.

In *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), a Catholic parochial school and a boys' military academy sued to enjoin the enforcement of an Oregon statute compelling attendance at public schools by children between eight and sixteen years of age who had not passed the eighth grade. This Court, relying upon the *Meyer* and *Bartels* decisions, held the statute unconstitutional under the Due Process Clause insofar as it infringed the liberty of parents to direct the education of their children by sending them to private schools and interfered with the right of private schools to secure students for instruction. This Court said:

> "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare." (268 U. S. 510, 534).
>
> "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." (268 U. S. 510, 535).

Farrington v. *Tokushige*, 273 U. S. 284 (1927), is particularly relevant here since it concerned a statute and school regulations of the Territory of Hawaii whose effect was similar to the statute here involved. In that case a 1920 statute, as amended in 1923 and 1925, purported to regulate all schools "conducted in any language other than the

English language or Hawaiian language, except Sabbath schools." It forbade any instruction in such other languages after September 1923 to children who had not reached the third grade. Regulations issued under the act further forbade those schools to teach any student under 15 years of age or any student who had not completed the eighth grade, unless such student was then attending a public school or an approved private school.[9] This Court, reaffirming its *Meyer*, *Bartels* and *Pierce* decisions, held that Hawaiian legislation of the '20's unconstitutional as an unreasonable restriction upon the schools and the parents' right "of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful. The Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another tongue." (273 U. S. 284, 298). This Court also said:

> "We of course appreciate the grave problems incident to the large alien population of the Hawaiian Islands. These should be given due weight whenever the validity of any governmental regulation of private school is under consideration; but the limitations of the Constitution must not be transcended." (273 U. S. 284, 299).

Although Justices Holmes and Sutherland dissented in the *Meyer* and *Bartels* cases, they expressly stated that they did so "with hesitation and unwillingness." Furthermore, their dissent was only that a State should be allowed to prohibit the teaching of foreign language *in the schools*

[9] The statute also required a permit and prescribed fees for the schools, forbade anyone to teach in a foreign language school without a permit, prescribed the hours of attendance of pupils, and authorized the Department of Public Instruction to regulate the courses of study, textbooks, and other school matters.

giving regular education to children who are able to hear other languages outside of the regular schools.[10] We submit that the basis underlying their dissent in the *Meyer* and *Bartels* cases is not applicable to Act 104 which effectively forbids the teaching of foreign languages not only *in the regular schools* but also, and more important, *outside of regular school hours*. It is, moreover, particularly noteworthy that Justices Holmes and Sutherland, despite their dissent in the *Meyer* and *Bartels* decisions, later joined in the unanimous opinions announced by this Court in the *Pierce* and *Farrington* cases.

That the right to learn a foreign language is a basic civil right protected by the Constitution was further reinforced by this Court's decision in *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500 (1926), in which this Court invalidated a statute of the Philippine Islands infringing the right to *use* a foreign language.

Under these decisions, the prohibition in the 1943 Hawaiian statute against the teaching of a "foreign language" is, we submit, plainly unconstitutional. Every contention here urged by the Territory of Hawaii in support of the statute was considered and rejected by this Court in those cases, cases which have been repeatedly cited and

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[10] The basis for the Holmes-Sutherland dissent was:

"that in some circumstances, and circumstances existing it is said in Nebraska, the statute might . . . be regarded as a reasonable and necessary method of achieving the desired result [that all United States citizens speak a common language] . . . Youth is the time when familiarity with a *language* is established and if there are sections in the State where a child would hear only Polish or French or German spoken at home I am not prepared to say that it is unreasonable to provide that in his early years he shall hear and speak only English *at school* . . . it appears to me to present a question upon which men reasonably might differ and therefore I am unable to say that the Constitution of the United States prevents the experiment being tried." *Bartels* v. *Iowa*, 262 U. S. 404, 412 (1923). (Emphasis supplied.)

reaffirmed by this Court. See *Prince* v. *Massachusetts*, 321 U. S. 158 (1944). More specifically, this Court expressly considered and rejected the contentions now made by the Territory of Hawaii (Appellant's Brief, pp. 51-55, 70-72) that legislation of this character is justified by the mystic label *parens patriae* or by the argument that the power of the government "to improve the quality of its citizens, physically, mentally and morally" authorizes the prohibition against the teaching of foreign languages to young children "as injurious to the health, morals or understanding of the ordinary child." *Meyer* at pp. 401 and 403; see also *Bartels* at pp. 406-407 and *Pierce* at pp. 524-525.

Indeed, Act 104 goes farther in violating constitutional rights than did the statutes in the *Meyer*, *Bartels* and *Farrington* cases. Those statutes prohibited the teaching of foreign languages *only in schools and during school hours;* but Act 104 prohibits the teaching of foreign languages *both during and after school hours.* Those statutes dealt only with language teaching *by professional teachers at school*; but Act 104 defines "school" so broadly as to prohibit *a father or a mother* from teaching the parental language to his or her two children *at home and after school hours*, either personally, or, as the Territory's attorney pointedly indicated to the court below (R. 137, 144, 145), with the aid of a tutor.

B. Act 104 Is Not Reasonably Calculated to Achieve the Purpose Allegedly Intended by the Hawaiian Legislature:

First, Because It Lacks an Adequate Basis in Fact for Prohibiting the Teaching of Foreign Languages to Children of Average Intelligence; and

Second, Because the Supposed Necessity for Protecting Children of Average Intelligence Does Not Warrant the Denial of Foreign Language Instruction to Children of Above Average Intelligence.

Consequently, Act 104 Lacks a Rational and Substantial Basis to Justify Its Infringement of Fundamental Civil Rights and Is Therefore Invalid.

Act 104 was enacted to meet two supposed evils which the Hawaiian legislature believed to exist in Hawaii. These were that children of average intelligence in Hawaii (1) were below the standards of the mainland in learning English and (2) suffered emotional disturbances and maladjustments injurious to their health as a result of speaking and learning more than one language in their formative years. Although the attorneys for the Territory assert that "The law is based on the premise that bilingual studies by children of tender age are injurious" (Appellant's Brief, p. 61), they attempt to qualify this premise by contending that Act 104, despite its all inclusive language, was not intended to prevent parents from personally teaching a foreign language to their children, but only to prevent formal study in foreign language schools, "such study being what the legislature expressly found to be harmful to children in their early and formative years" (Appellant's Brief, pp. 92, 93-94). But even if we assume, *arguendo*, that this is the correct interpretation of the

legislature's "declaration of legislative findings", the mere assertion by the legislature that the two supposed evils exist, and that attendance at foreign language schools is the cause of these evils, does not foreclose judicial inquiry to ascertain whether the alleged bases for the statute exists. Where, as here, the statute impinges upon fundamental personal rights and liberties which are protected by the Constitution and the exercise of which is vital to the maintenance of democracy, this Court will "weigh the circumstances and . . . appraise the substantiality of the reasons advanced." *Schneider* v. *State*, 308 U. S. 147, 161 (1939); *Thornhill* v. *Alabama*, 310 U. S. 88, 96 (1940). The fact that the reasons advanced by the Legislature have been embodied in a legislative "declaration" does not immunize them from judicial scrutiny. *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 547 (1924); *Charles Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 536 (1923); *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 209-210 (1934).

The court below, because it held Act 104 unconstitutional on other grounds, made no findings that all children of average intelligence speaking and learning more than one language thereby suffered emotional disturbance and maladjustment injurious to their health or thereby fell below the mainland standards in learning English. But these are the supposed facts upon which the constitutionality of the statute rests. Since the presumption of constitutionality gives little aid to statutes which impinge on fundamental personal human liberties guaranteed by the Constitution, the present record lacks adequate basis for assuming the validity of the statute in the absence of judicial findings confirming the existence of the facts upon which the statute rests. This Court, therefore, could not, in any event, uphold the validity of Act 104 in the absence of such findings.

Nashville, C. & St. L. Ry. v. *Walters*, 294 U. S. 405, 433 (1935).

Even if these evils of emotional maladjustment and English deficiency exist, it does not follow that these evils are caused by attendance at foreign language schools. The witnesses for the Territory of Hawaii were unable to point to any recorded cases of neuroses arising from language study by children in Hawaii (R. 331, 377, 418). Furthermore, the fact is that the study of foreign languages by children in Hawaii tends to *prevent* emotional maladjustment. Many children in Hawaii have parents who speak more fluently in languages other than English. In such cases the child's opportunity to learn, outside of regular school hours in which no such instruction is given, a language other than English serves to bridge the gap between the child and its parents (R. 169, 185-186, 220, 261, 301, 305, 314, 330, 379-383, 444). The language schools thus serve "as stabilizing factors because of the service they rendered youth that were in danger of losing the social benefits of home and family influence before they had sufficiently accepted the customs and institutions of the American community in which they were growing up." Hearings on H. R. 3034, *Statehood for Hawaii*, Subcomm. of House Comm. on Territories, 74th Cong., 1st sess., pp. 83-84 (Oct. 7-18, 1935) (R. 557-558). Obviously, such children more probably would suffer "serious emotional disturbances, conflicts and maladjustments" where the government prevents their learning the language of their parents than they would incur by attendance at a foreign language school. It is cultural conflict, not bilingualism as such, which is largely responsible for any emotional maladjustment in bilingual children. *46th Yearbook, National Society for the Study of Education*, Part II, "Early Childhood Education," p. 209 (1947). This was acknowledged by the Territory's witnesses

in this case (R. 304-305, 379). Even the counsel for the Territory of Hawaii would not claim that the concurrent use and teaching in Switzerland of *four* national languages (German, French, Italian, Romansh) has transformed the Swiss into a nation of neurotics. 21 *Encyclopaedia Britannica*, p. 677 "Switzerland" (1947); Robert C. Brooks, *Civic Training in Switzerland*, 184-185, 298-299 (1930).

Morever, on the precise issue whether attendance at foreign language schools retards children in Hawaii in the learning of English there have been only two scientific studies. Both of these have demonstrated that such attendance has practically no retardative effect and that any retardation in their learning of English is primarily due to the use, outside of the schools, of *pidgin-English*, a polyglot jargon of English words mixed with phrases of Hawaiian, Chinese, Portuguese, Malayan, and other languages.[11] The testimony by some of the Territory's witnesses that foreign language studies retard children in the study of English (summarized in Appellant's Brief, pp. 63-68) consists almost entirely of statements of opinion and supposition. Several of the Territory's witnesses, furthermore, admitted on cross-examination that the prime factor tending to retard children in the mastery of English in Hawaii is the use of pidgin-English (R. 254-255, 259, 269, 270, 353, 356, 357). The enforcement of Act 104 would therefore have little, if any, effect in aiding the children to increase their mastery

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[11] R. 213, 215-218, 227, 254-255, 259; Percival M. Symonds, "The Effect of Attendance at Chinese Schools on Ability with the English Language [in Hawaii]" 8 *Journ. of Applied Psych.* 411 (Dec. 1924) (R. 507, 513, 516); Henry B. Schwartz, "A Study of the Effect of Attendance at Language Schools Upon Success in McKinley High School [in Hawaii]" 14 *Hawaii Educational Review* 30 (Oct. 1925); Hearings, *Statehood for Hawaii*, Joint Comm. on Hawaii, 75th Cong., 2nd sess., pp. 329-330 (Oct. 6-22, 1937) (R. 547-548); Hearings, *Statehood for Hawaii*, on H. R. 3034, Subcomm. of House Comm. on Territories, 74th Cong., 1st sess., pp. 81-84 Oct. 7-18, 1935 (R. 555-558).

of English. But it would practically destroy the rights of the children, their parents, the teachers and the owners of the schools to participate in voluntary instruction of subjects not harmful or dangerous to the children or to the public or to the government. The evil which the legislature sought to correct should more properly be met by improving the techniques of teaching English in the regular public, private and parochial schools, not by stifling the voluntary teaching of other languages outside of school hours.

Furthermore, even if it be true, as asserted by the Territorial legislature in its "declaration of legislative findings", that the prohibition against foreign language instruction is necessary to aid children of *average* intelligence or below to learn English well, it does not justify this statute. Under this statute, not only the children of *average* intelligence and below, but also children of *above average* intelligence are deprived of the opportunity to learn a foreign language and thus broaden their education. Act 104 is not like a statute requiring the learning of English, which admittedly promotes the public welfare. Act 104 is a statute which closes the door of knowledge in other languages to all children under 15, irrespective of their level of intelligence, who are in the first four grades or who have dropped out of school before completing the 8th grade, and to all school children under 15 who, fortunate enough to have passed the 4th grade, have the double misfortune of not having yet passed the 8th grade and of having received a grade "lower than normal for his grade" in "a standard test in English." Children are generally at least 10 years old before they have passed the 4th grade. But, as Justice Holmes so incisively said: "Youth is the time when familiarity with a language is established . . ." (ftnt. 10, *supra*). For the many children in Hawaii who begin to sup-

port themselves in their early 'teens, it is their only time to learn a foreign language (R. 289, 360, 361, 467-468, 480, 492). Act 104 thus limits, rather than promotes, the field of human knowledge. It is, in truth, a statute to encourage ignorance. Compare *Scopes* v. *State*, 154 Tenn. 105, 289 S. W. 363 (1927) (Tennessee statute forbidding the teaching of evolution in schools). As the court below made clear, Act 104 constitutes an unreasonable discrimination with respect to half of the children covered by the statute. Even if the Territory is correct in its strained construction of the word "average", *i.e.*, that the Legislature found the prohibition against foreign language instruction necessary to aid all but exceptionally brilliant children to learn English (Appellant's Brief, pp. 80-89), there still is no justification for the discrimination against the latter's right to learn a foreign language. Accordingly, the statute must fall; the legislature has the duty of drafting a statute directed precisely at evils it may constitutionally prevent. See, *e. g.*, *Winters* v. *New York*, 333 U. S. 507 (1948).

Act 104 is therefore invalid because it lacks an adequate, substantial and rational basis in fact for the prohibition it imposes on fundamental civil rights, *Minnesota* v. *Barber*, 136 U. S. 313, 320 (1890); *Nectow* v. *Cambridge*, 277 U. S. 183 (1928); *Jacobson* v. *Massachusetts*, 197 U. S. 11, 31 (1905); *Booth* v. *Illinois*, 184 U. S. 425, 429 (1902); and because it is not "narrowly drawn to cover the precise situation" that would call for remedial action if the supposed evils and the cause thereof were as stated by the legislature. *Thornhill* v. *Alabama*, 310 U. S. 88, 105 (1940); *Cantwell* v. *Connecticut*, 310 U. S. 296, 311 (1940); *Murdock* v. *Pennsylvania*, 319 U. S. 105, 116 (1943).

II. THE PURPOSEFUL DISCRIMINATION AGAINST CULTURAL AND RACIAL MINORITIES WHICH UNDERLIES THIS STATUTE RENDERS IT UNCONSTITUTIONAL.

Statutes forbidding the teaching or use of foreign languages are largely motivated by prejudice against particular minorities in the community. See *Bartels* v. *Iowa*, 262 U. S. 404, 413 (1923); *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500, 528 (1926). Although the Hawaiian legislature, in its "declaration of legislative findings", sought to justify Act 104 as an attempt to help children of average intelligence to learn English, the legislative history of Act 104 plainly indicates that it was directed especially against the Japanese, Chinese and Korean speaking residents of Hawaii. H. Journ., p. 916, and S. Journ., pp. 363-364, 22nd Legislature of Hawaii (1943). It was hysteria, antagonism and prejudice against those of Oriental descent which largely influenced the anti-foreign language statutes in Hawaii. See Hearings on H. R. 3034, Statehood for Hawaii, Subcomm. of House Comm. on Territories, 74th Cong., 1st sess., p. 82 (Oct. 7-18, 1935) (R. 556); Plaintiff's Exh. G. (R. 551). The fact that Act 104 was directed against "discrete and insular" cultural minorities at the very least weakens the general presumption of its constitutionality. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 153, n. 4 (1938); see also *Thomas* v. *Collins*, 323 U. S. 516, 529-530 (1945); *United States* v. *C. I. O.*, 335 U. S. 106, 140 (1948) (concurring opinion of Justices Rutledge, Black, Douglas and Murphy). And where, as here, the statute is also purposefully aimed at particular racial groups, its invalidity becomes manifest. This Court has consistently affirmed that under our Constitution governmental restrictions aimed at particular racial groups "in the eye of the law is not justified." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 374 (1886); *Yu Cong Eng* v. *Trini-*

dad, 271 U. S. 500, 525-527 (1926); *Smith* v. *Texas*, 311 U. S. 128, 130 (1940); *Steele* v. *Louisville & Nashville R. R. Co.*, 323 U. S. 192, 203, 208 (1944). And there is here entirely absent any "pressing public necessity" or "compelling justification" which it has been said "may sometimes justify" restricting the civil rights of racial groups. *Korematsu* v. *United States*, 323 U. S. 214, 216 (1944); *Oyama* v. *California*, 332 U. S. 633, 640 (1948). It is immaterial whether this Constitutional protection against the Territorial government's manifestation of racial hostility is ascribed to the Due Process Clause of the Fifth Amendment, as implied in *Hirabayashi* v. *United States*, 320 U. S. 81, 100 (1943) and *Korematsu* v. *United States*, 323 U. S. 214, 216 (1944), or to the established public policy of the United States which forbids any branch of the Federal or territorial governments to do what the Equal Protection Clause of the Fourteenth Amendment would, if this statute had been enacted by a State, clearly deny to a State government. *Hurd* v. *Hodge*, 334 U. S. 24, 35-36 (1948); *Shelley* v. *Kraemer*, 334 U. S. 1 (1948).

III. ACT 104 NECESSARILY INFRINGES ON THE FREEDOMS OF RELIGION AND OF THOUGHT, WITHOUT JUSTIFICATION BY ANY CLEAR AND PRESENT DANGER TO INTERESTS WHICH THE TERRITORY MAY LAWFULLY PROTECT, AND IS THEREFORE INVALID UNDER THE FIRST AMENDMENT.

The exercise of religion is, among many religious groups, intimately linked with languages other than English. For example, Latin is used in the Catholic mass; Orthodox Jewish prayers are in Hebrew; worship in the Greek Orthodox Church and the Russian Orthodox Church uses the Greek language. The language imparts a vitality, religious significance and accuracy to the prayers and

catechisms which is lacking in an English translation. To the Chinese child the religious nuances and impact of the teachings of Confucius may be immeasurably greater when learned in Chinese. *Cf.* Louis Wirth, "Education for Survival: The Jews," 48 *American Journal of Sociology* 682, 686, 688-689 (May 1943).

Under Act 104, however, a Catholic priest is prohibited from teaching the mass in Latin to many Catholic children under 15 (R. 401); an orthodox Jewish Rabbi is forbidden to instruct many Jewish children in their Hebrew prayers; and, as in this case, children of Chinese descent are prevented from obtaining religious instruction in the language of Confucius. Perhaps the Territorial legislature may not have intended this result. But if it "has made a choice of language which fairly brings a given situation within the statute, it is unimportant that the particular application may not have been contemplated by the legislators." *Barr* v. *United States*, 324 U. S. 83, 90 (1945).

Furthermore, Act 104 inevitably stifles freedom of thought, expression and learning, since there is a close bond between ability to learn and express one's self in a particular language, and freedom of thought as we conceive it. "Language is the dress of thought."

This Court has held that the great and preferred freedoms of religion and of thought "are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect." *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 633, 639 (1943). But no one could contend that a "grave and immediate danger" to the Territory of Hawaii or its government results from voluntary instruction in languages other than English. Nor is there any "grave and immediate danger" to the children themselves, for whose emotional stability the Territory is so solicitous. See Point IB above. Furthermore, the rights which the

teachers, parents and children here assert do "not interfere with or deny rights of others" and hence there is even less justification for governmental interference with their rights. *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 630 (1943).

The restriction of religious freedom which results from this statute is not a minor incident to a statute of general applicability which promotes the welfare of the people such as was present in *Jacobson* v. *Massachusetts*, 197 U. S. 11 (1905) (compulsory vaccination); *Hamilton* v. *Regents*, 293 U. S. 245 (1934) (military training); *Shapiro* v. *Lyle*, 30 F. (2d) 971 (D. C., W. D. Wash. N. D. 1929) (regulation of alcoholic liquor); *Davis* v. *Beason*, 133 U. S. 333, 342 (1890) and *Mormon Church* v. *United States*, 136 U. S. 1, 49-50 (1890) (prohibition of polygamy); and *Prince* v. *Massachusetts*, 321 U. S. 158 (1944) (child labor laws). In the latter case, a statute forbidding minors to sell newspapers, periodicals or merchandise on the streets was held valid as applied to children selling religious periodicals at night on the streets. That statute did not impair the child's freedom to exercise his religion in any other place or by any other means except through the sale of periodicals on the streets, and this minor restriction upon the claim to absolute religious freedom was deemed valid in order to accommodate the admitted power of the state to regulate child labor.

But when Act 104 is "tested by its operation and effect," *Near* v. *Minnesota*, 283 U. S. 697, 708 (1931), it is plain that the statute goes beyond an accommodation between religious freedom and the Territory's interest in having its citizens speak a common language. Act 104 absolutely prohibits the teaching of religion in a foreign language to many children under fifteen. This is not a minor restriction to accomplish a legitimate and general objective within the power of the government. It is a

major and unjustified impairment of religion for those whose religious views are expressed in languages other than English. If a state's interest in promoting patriotism by compelling children to salute the flag is not sufficiently weighty to warrant a restriction upon freedom of religion, as was held in *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624 (1943),[12] then the Territory's interest in having all its citizens speak a common language is not sufficiently weighty to restrict the religious training of children by forbidding them to learn the language through which their religion is expressed. This is so even if it be assumed that the Territory could compel its citizens to crystallize into a uniform language mold in situations where religion is not intertwined with language. And it is particularly true since the Territory could, by improving its teaching of English in the regular schools, more easily and properly promote its interest in having its citizens speak a common tongue. This ability of the Territory thus to achieve its legitimate interest by means which do not impinge on the exercise of religion prevents the Territory from having any valid objection to the invalidation of the statute. *Minersville School District* v. *Gobitis*, 310 U. S. 586, 603-604 (1940); *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 631 (1943). Furthermore, the Territory's interest in a common tongue, like its interest in promoting patriotism through the compulsory flag salute, is not as weighty as its interest in regulating child labor or requiring vaccination against disease. The impact of Act 104 on religion thus cannot be justified as a minor restriction incident to general legislation promoting the public welfare. It is a direct and major infringement of religious liberty and

[12] See also *Taylor* v. *Mississippi*, 319 U. S. 583 (1943) holding that a State may not punish the *teaching* of resistance to governmental compulsion to salute the flag.

falls under the ban of the First Amendment to the Constitution.

CONCLUSION.

We believe that Act 104 violates the First and Fifth Amendments to the Constitution and that the three-judge district court correctly held Act 104 to be invalid. We also believe that this act is inconsistent with the public policy of the United States. We therefore respectfully urge this Court to affirm the judgment of the three-judge district court.

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